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Supreme Court, U.S.
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No___

IN THE

Supreme Court of the United States

NICOLAS S. LAURENT
et, al.,

Petitioners,

v.

NANCY N. HERKERT, TRUSTEE
et, al.,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT [No. 05-17173 –II

PETITION FOR WRIT OF CERTIORARI

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PRO SE / ATTORNEY

QUESTIONS PRESENTED

1. Whether Court of Appeals erred on August 22, 2006, affirmed the United States District Court order, which it previously vacated on August 22, 2005, Case Number: 04 -16182 HH, in favor of Petitioner and remand to the District Court Judge Marcia G. Cooke, who is already disqualify herself in Petitioner's case on March 9, 2005, pursuant to **28 U.S.C. § 455 (a) App.** 24b

2. Whether Court of Appeals erred in the ruling made in Case Number: 05-17173 II, deny Petition for Rehearing on November 29, 2006, and affirmed the United States District Court Case Number: 04- 22076-CV – MGS order deny Petitioner motion for leave filed timely pursuant to bankruptcy rules 8002 (a), granted in the bankruptcy court, to the United States District Court. **Pet. App.** 25c-26c

3. Whether Bank Atlantic, creditor inside chapter 13 payment plan, can made fraudulent transfer, and concealment, with Nancy N. Herkert, in Petitioner Guardian home property tax, without Petitioner knowledge, and consent, to made a second illegal foreclosure, in the Guardian home property taxes, on November 13, 2002, without relief from automatic Stay, and when petitioner's chapter 13 bankruptcy payment plan, was fully active and effect.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Petitioner - Appellant, Nicolas S. Laurent Guardian for the four children, J. S. L, A. S. L, N. S. L, B. S. L

Respondent- Appellee, Nancy N. Herkert, Chapter 13 trustee

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i
PARTIES TO THE PROCEEDING.....ii
TABLE OF CONTENTS.....iii
TABLE OF AUTHORITIES.....iv-v
OPINIONS BELOW.....1
BASIS FOR JURISDICTION.....1
STATUTORY PROVISIONS INVOLVED.....1
STATEMENT OF THE CASE.....2-18
REASONS FOR GRANTING THE WRIT.....18-30
CONCLUSION.....30
APPENDIX.....Follows Conclusion

TABLE OF AUTHORITIES

Cases **Page**

Borg Warner Acceptance Corp, Hall
685 F. 2d 1306 (11th Cir. 1982.....19
Ascon properties Inc, v Mobil oil Co.
866 F. 2d 1149, 1160, 9th Cir, 1989.....29
Conley v. Gibson 335 U.S. 41-46
1954.....29
in re Cochise College Park 703 F.
1339 (9th Cir. 1983).....27
Burns v. Imagine films Entm't Inc.....29
16 F.R.D. 381, 385 (W. D. N.Y. 1992).
Block v. First Blood Association
988 F. 2d 344, 350, (2d Cir. 1993).....29
State Teachers Retirement Bd.v.
Fluor Corp., 654 F. 2d 843,
856 (2d Cir. 1981}.....29
Constitution Bank vs. Stubbs, 68 F.
3d 685 (3Cir. 1995).....27
Dioguardi vs. Durning 2 Cir. (1944)
139 F. 2d 774.....26
Elgin Joliet& Eastern Ry Co v.
Industrial Community 9111 2d 505,
507, 138 N.E. 2 D 553 (1956).....29
Kalb v. Feurstein 308 U.S. 433. 60
S. Ct 343, 346. 84L E.d. 370 (1940) 29
Kingwood oil Co. v. Bell 204 F.
2d 8, 13 (7th Cir.....28
Melrose Park National v. Capitol Bank
trust 180 111 App. 3d 662, 536 N.E.
2D 104 (1989).....29

TABLE OF AUTHORITIES

Norris vs. Estate of Norris 143 111
app. 3d 741, 748, 493, N.E 2d
(121) (1986).....29
Raymark Industries v. La
973, F2d1124 (3d Cir, 1992).....29
Rainberg v. Klein 5 P 351
(ColoApp. 1999.....29
In People v. Lepe 211 Cal Rptr.
432, 434 (Cal App, 1985).....29
Peterson v. Peterson 939, P. 2d
522 (Colo. App.(1997).....25
Scheuer v. Rhodes, 416 U.S. 232,
236, 40L ED 90 94 S. CT. 1683
(1974).....29
River park Inc., vs. City of
Hyland Park 111 2D 290 306,
703, N.E. 2D 883 (1998).....23
Min Jin v. Metro Life Ins.Co.....29
310 F. 3d 84, 101 (2d Cir, 2002):

STATUTES AND RULES:
28 U. S. C. § 455 (a).....5
11 U.S.C. SECTION 323.....17
18 U. S. C. SECTION 704.....27
11.U.S.C.362 (h)
11 U.S.C. §362 (a) (1).....27
18 U. S. C. § 3057 (a).....27

PETITION FOR WRIT OF CERTIORARI

Petitioner, Nicolas S. Laurent, respectfully prays that a Petition for writ of Certiorari issue to review the Judgment of Court of Appeal, in this case.

OPINIONS BELOW:

The opinion of the United States Court of Appeals for Eleventh Circuit is the Subject Matter for the Petition for Writ of Certiorari which was previously vacated and published, in 149 Federal Appendix 933 (11th Cir. on August 22, 2005, Case Number: 04 -16182. **App.** 5a-12a.

The opinion of Court of Appeals for Eleventh Circuit, is reported at 2006 WL 2429960 (11th Cir. August 22, 2006 Laurent vs. Herkert No:. 05-17173 and the court subsequently deny Petition for Rehearing. See **Pet. App.** 1a-3a

JURISDICTION

The order of the United States Court of Appeals for Eleventh Circuit sought to be reviewed was entered on August 22, 2006, Petition for Rehearing were denied on November 29, 2006. **Pet. App.** 4a

On February 26, 2007, Justice Thomas extended the time within which to file Petition for Writ of Certiorari, to and including April 13, 2007, and thereafter, on April 9, 2007, Justice Thomas further extend the time to and- including April 28, 2007, to file the petition. the jurisdiction of this court is invoked under 28 U.S.C. § 2101 (C), and 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS INVOLVED

XIV-Amendment- No States shall make or enforces any law which shall abridge the privileges or immunities of the United States, nor shall any states deprive any person of Life, Liberty, or property without due process of the law, nor deny to any person within the Jurisdiction equal protection of the law.

STATEMENT OF THE CASE

Petitioner, Nicolas S. Laurent filed this Petition for Writ of Certiorari to Supreme Court of the United States to review, vacate, and reverse the order deny Petition for Rehearing filed on November 29, 2006, and affirmed on August 22, 2006, render in the Court of Appeals for Eleventh Circuit, Atlanta, Georgia.

Previously Court of Appeals for Eleventh Circuit vacated the United States District Court order enter on October 20, 2004, in favor of Petitioner's Laurent which was based on the district court judge Marcia G. Cooke understanding, that it lacked jurisdiction over matter pertaining to the Federal Bankruptcy Court. See 149 F. App'x 933 (11th Cir. Aug. 22, 2005, Laurent vs. Herkert, Case No. 04-16182. **Pt. App.** 5a-15a

On October 20, 2004, District Court Judge Marcia G. Cooke erred in the order of Final Dismissal Case closed, indicated the District Court doesn't have jurisdiction over matter pertaining to the bankruptcy court, and Petitioner Laurent doesn't have Motion for Leave, in the United States bankruptcy Court to bring this action in the District Court Southern District of Florida, **which is incorrect. Pet. App.** 21b – 22b

Thereafter Petitioner filed Motion to Alter or Amend the Final Dismissal, Case closed, which was denied by Judge Cooke, on November 10, 2004.

Consequently, on November 19, 2004, Petitioner Laurent filed Notice of Appeal to Court of Appeals to reviewed the Final ruling case closed of the district Court.

Subsequently, on August 22, 2005, United States Court of Appeals for Eleventh Circuit vacated the

district order ruling made on October 20, 2004, and remand the case to the district court judge who already disqualify herself on March 9, 2005. **Pet. App.** 5a-15a

On August 22, 2005, Court of Appeals abuse its discretionary in the decision made by directed the United States District Court judge Marcia G. Cooke, whether or not to grant or denied Petitioner Motion for Leave filed timely in the Bankruptcy court, which Petitioner Laurent complying with bankruptcy Rules 8002(a) to filed his motion to leave timely in ten (10) days, entry of the order, accompany with Notice of Appeal. which the bankruptcy court Granted to the District Court.

Thereafter, on August 17, 2004, the bankruptcy court transmittal the Motion to Leave, to the United States District Court Southern District of Florida. **App.** 25c-26c. On November 18, 2005, Judge Marcia G. Cooke erred in the ruling final dismissal denying Petitioner motion to Leave, after one year half, for the same case, which judge Cooke previously indicated it didn't have subject matter jurisdiction to made a ruling, on October 20, 2004. **Pt. App.** 16b-19b

United States District Court has jurisdiction to hear Petitioner appeal, since Petitioner filed Motion for leave to appeal timely on July 30, 2004, granted by the United States bankruptcy court, to the United States District Court. Fed Rules Bankr. P. subsection (a) governing the manner for appealing as a right provides an appeal " shall be taken by filing Notice of Appeal, within the time allowed by Rule 8002. See Fed. R. Bkc. P.8002**(a)**

On remand, the District court again denied Motion to leave in a decision dated November 18, 2005, and

the decision, to the United States Court of Appeals for Eleventh Circuit. Pt. App. 20b

Thereafter, on November 25, 2005, Mr. Nicolas S. Laurent filed Motion to alter or Amend Final order of Dismissal.

Consequently, on December 15, 2005, order Deny Petitioner Motion to Alter or Amend Final order of Dismissal, by judge Marcia G. Cooke. Pet. App. 20b

On December 21, 2005, Mr. Nicolas S. Laurent filed Notice of Appeal timely, for the order render on December 15, 2005, in the United States District Court Southern District of Florida, to Court of Appeals for Eleventh Circuit, to reviewed the District court final dismissal on November 18, 2005, and December 21, 2005, for abuse of discretion, because district court Judge Marcia G. Cooke already recuses herself in Mr. Laurent case on March 9, 2005. Pet. App. 24b

Petitioner Notice of Appeal filed in the United States District Court to Court of Appeals for Eleventh Circuit on December 21, 2005, list -Appellee, Nancy N. Herkert, as trustee for the Chapter 13, not United States Trustee.

Respondent is a private individual chapter 13 trustee, and not component of Justice Department.

Consequently, on March 9, 2005, Order of Recuses, Judge Marcia G. Cooke disqualify from Petitioner Laurent's case # 04-22471, in the United States District Court, Southern District Miami - Florida, for prejudice, bias, toward Petitioner, Nicolas S. Laurent. App. 24b

The panel Judges of the Court of Appeals erred in the opinion indicated the United States District Court made fair ruling.

On March 9, 2005, judge Marcia G. Cooke recuses in Mr. Nicolas S. Laurent case, . pursuant to 28 U.S.C. § 455 (a). App. 24b.

Rules 28 U.S.C.§ 455 (a), any justices, judge or magistrate of the United States shall disqualify himself or herself in any proceeding in which his or her might reasonably be questioned.

In a decision dated August 22, 2006, the United States Court of Appeals affirmed the District Court order dated November 18, 2005, and December 15, 2005.

Thereafter Appellant filed Petition for Rehearing in the Court of Appeals for Eleventh Circuit.

Consequently, on November 29, 2006, the United States Court of Appeals denied Petition for Rehearing.

On August 22, 2006, the United States Court of Appeals three panel Judges indicated in the Opinion that the Guardian home property, belong to the Laurent Children. See Pet. App. pages 3,

A. Mr. Laurent prosecuted, in the state court Eleventh Judicial Circuit, Dade County, Miami-Florida, and no default being entered against Mr. Laurent.

B. Mr. Stephen N. Rosenthal, attorney for Hugo A. Martinez doesn't have any writ of Possessions in the State Court, Eleventh Judicial Circuit Court, as of today. Mr. Hugo A. Martinez mortgage foreclosures Cancelled, in the States Court, Eleventh Judicial Circuit Court, Case Number: 00-30948-CA 01 (32), recorded in Harvey Ruvin Clerk Book 22494 at page 0146, Dade County, Miami, Florida.

United States district court judge Marcia G. Cooke erred in the final dismissal case close, since the bankruptcy Rules 8002 (a), indicated when a person filed Motion to leave accompany with Notice of Appeal timely in ten (10), days entry, of the order, it should be granted in the United States bankruptcy court, as well as in the United States District court.

Mr. Laurent, complying with the bankruptcy court with respect to the Bankruptcy Rules, 8002(a), and with the term and condition of the contract sign with Bank Atlantic to received the monthly payment for the Guardian home property tax certificates at 18 % interest rate, inside Petitioner bankruptcy Chapter 13 payment plan, since October 10, 2000.

On October 10, 2000, Petitioner, Nicolas S. Laurent hired three bankruptcy attorneys to filed voluntary Petition Chapter 13, payment plan, on behalf of Mr. Nicolas S. Laurent to paid the creditors approved by Respondent, Nancy N. Herkert, Chapter 13 trustee, including , Bank Atlantic FSB # 810, Joanne M. Chin as well as United States bankruptcy Court Southern District of Florida, for 5 years term at 18% interest rate, which Mr. Laurent comply with the term and condition of the contract, to made his payment.

On March 13, 2001, creditor Bank Atlantic FSB # 810, Joanne M. Chin executed binding contract with Mr. Nicolas S. Laurent, for $ 7, 776. 53, to received Payment inside the chapter 13 payment plan, at 18 % interest, accrue monthly for 5 years term, total $ 15, 941, 89, to paid for the Guardian home property taxes.

Petitioner comply with the term and condition of the contract to made his payment to creditor Bank Atlantic every month inside the chapter payment plan.

Thereafter on November 13, 2002, Respondent Nancy N. Herkert conspire with creditor Bank Atlantic FSB #

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[1] Court of Appeals erred affirmed United States District Court order of final dismissal, case closed, indicated Petitioner doesn't have motion to leave to appeal, in district court , when Petitioner complying with Rule 8002(a), filed his Motion for Leave timely in 10, days, Granted in the United States Bankruptcy Court, and Transmittal to United States district court on August 17, 2004.

810, Joanne M. Chin, to used Petitioner's Guardian home property taxes inside chapter 13 payment plan to made second fraudulent concealment illegal foreclosure, in the State court Eleventh Judicial Circuit Court, without relief from Automatic Stay, in the bankruptcy court , and without petitioner consent, and knowledge, when Mr. Laurent chapter 13 was active and effect.

Subsequently, on November 14, 2002, Petitioner filed objection to the second foreclosure sale, in the State Court, Eleventh Judicial Circuit, indicated the Guardian home property taxes paid inside Petitioner chapter 13 Bankruptcy payment plan, every month, since October 10, 2000.

Petitioner contacted the County by phone, and went to Miami-Dade County Tax Collector to clarify the violation made in fraud with the Guardian home property tax, since the Guardian home property taxes is protected under the bankruptcy code, which Mr. Laurent paid in the bankruptcy court chapter 13 payment plan, since October 10, 2000.

On December 4, 2002, Ms. Elsa C. Machado, Bankruptcy Unit property tax collector sent Mr. Laurent, a letter of clarification, indicated it resolves the matter with Bank Atlantic FSB # 810, Joanne M. Chin, regarding the return of the pre- payment of the Guardian home property tax back to Petitioner Laurent Chapter 13 payment plan, to continue the payment in the normal course, in favor of Petitioner Guardian home. **Pet. App.** 31c-32c

United States Court of Appeals, and United States District Court erred, indicated " the is no dispute among the court, for Mr. Laurent.

United States Court of Appeals for Eleventh Circuit abused its discretions indicated "the order did not present any issue of controlling."

The order does present an issue of controlling law over decision among court.

On December 5, 2002, in Mr. Nicolas S. Laurent Emergency Motion for Clarification Hearing in the bankruptcy Court, regarding the pre-payment of the Guardian home property taxes, Judge Paul G. Hyman **recognized that the Guardian home property include the tax certificates belong to Petitioner Laurent, and the children, therefore Judge Paul G. Hyman order :**

On paragraph (B), the trustee, Bank Atlantic, and Miami-Dade County Tax Collector have to resolved the issue regarding the pre -payment of the tax Certificates in favor of Petitioner, Laurent's Guardian home property, and therefore it is ordered by the Honorable Judge Paul G. Hyman, Jr : **Pet. App.** 33c-34c

On paragraph (3), The trustee is authorized to return Bank Atlantic the sum of $ 4, 356. 58, and to continue disbursing the funds pursuant to the plan, in the normal course. **Pet. App.** 33c-34c

On paragraph (4), Bank Atlantic shall return to Miami Dade Tax Collector $ 10, 115. 34, less the $ 6. 25, redemption fees that Bank Atlantic received from Miami Dade County, with regard to the unapproved redemption of the Tax Certificates in this case.

The state Court, Eleventh Judicial Circuit Court after carefully examine the record and being otherwise advised of the premises, recognized the property belong to Petitioner, consequently, **Cancelled** both foreclosure actions in the Guardian home property, recorded on Harvey Ruvin Clerk of Court Book # 22494, at pages 0146, Dade County West Flagler Miami, Florida.

Fidelity National Title Insurance Company recognized the property belong to Mr. Laurent in Pennington litigation, and consequently on June 21,

1996, the Title Insurance transfer the Title of the property from Real owner Mr. Richard L. Pennington, and wife Guadalupe, first party to Mr. Nicolas S. Laurent, Second Party forever, in the Eleventh Judicial Circuit Court, Dade County, Miami-Florida, case # 92-24742 CV (21). **Pet. App.** 45d-47d

Respondent, Nancy N. Herkert failed to abide by Judge Paul G. Hyman order, on December 5, 2002, to return the pre - payment of Petitioner's Guardian home property taxes back into the chapter 13 payment plan.

Respondent, Nancy N. Herkert, create so many catastrophe, by failing to abide by the bankruptcy order , fail to do her duties as trustee, first Respondent failed to protect the estates of the debtor, then conspire, to committed fraudulent transfer with creditor, Bank Atlantic FSB# 810, Joanne M. Chin, in the property taxes, while receiving payment, from Mr. Laurent, every month, in the Bankruptcy Court Chapter 13.

Thereafter, Respondent invented, and created a plot to dismissed Petitioner chapter 13 plan, in so many occasions, for favoritism, bias, prejudice, and to prevent the fraudulent transfer occurred in the Guardian home property tax , from revealing.

Respondent Nancy N. Herkert cause Mr. Laurent, and family so much injury, damage, stresses, embarrassment.

Respondent also cause Petitioner, and the children life to be nightmare, took Petitioner's both properties, and throw Petitioner in the Street, with four children for Bias, and prejudice.

Respondent, Nancy N. Herkert act like attorney for Creditor, Bank Atlantic FSB # 810, Joanne M. Chin., etc.

Petitioner's former Bankruptcy attorney Michael J. Brooks Chapter 13 payment plan, on behalf of Nicolas S. Laurent demonstrates from October 10, 2000, to December 2002, Nicolas S. Laurent paid $ 2, 077, 70 per month, in the chapter 13 payment plan, total $ 54, 020. 20, in the bankruptcy payment plan.

On or about December 2002, Petitioner thereafter retained a different Bankruptcy counsel Jared J. Kullman to continue the chapter 13 payment plan, in the normal course, on behalf of Petitioner, Nicolas S. Laurent; the payment plan demonstrates from January 10, 2003, to December 10, 2003, Petitioner, Nicolas S. Laurent paid $ 2, 410, 69, per month, total Petitioner paid to Respondent $ 24, 106, 90.

Petitioner previously paid $ 54, 020. 20, plus $ 24, 106. 90, total amount Petitioner paid to Respondent, Nancy N. Herkert, inside the chapter 13 Bankruptcy Court payment plan $ 78, 127, 10.

Consequently, Respondent, Nancy N. Herkert failed to credit Petitioner more than $ 24, 106. 90, inside the payment plan.

Thereafter, on November 10, 2004, Respondent, Nancy N. Herkert Chapter 13 trustee filed Notice of Deposit of Balance Funds, in the U. S. Bankruptcy Court, $ 4, 681. 64, out of $ 24, 106. 90, failed to credit Petitioner, inside the Chapter 13 payment plan, case Number: 00-50881-BKC- which is still, in the Court Registry, as of today. **Pet. App.** 37c

Now, the remaining balance is $ 19, 425. 26, which Respondent, Nancy N. Herkert failed to credit, Petitioner inside the Chapter 13 payment plan.

Petitioner, Nicolas S. Laurent doesn't owed Respondent, Nancy N. Herkert payment, inside the chapter 13 payment plan.

Respondent, Nancy N. Herkert Chapter 13 trustee committed prejudice toward Mr. Laurent by refused to allowed Petitioner Chapter 13 payment plan, to work in normal course.

Respondent, Nancy N. Herkert has a tendency to dismissed the chapter 13 payment plan, in order to conceal the violation and fraudulent transfer that occurred, in the Guardian home property tax certificates inside the chapter 13 payment plan, from revealing.

Petitioner, Nicolas S. Laurent is the one seeking for justice, in the court at law.

Creditor, Bank Atlantic FSB # 810, exercised prejudice, toward Nicolas S. Laurent in the Bankruptcy Court by refused to continue received payment for petitioner's Guardian home property taxes after 4 years contract signed in the Bankruptcy Court Chapter 13 payment plan, with Mr. Nicolas S. Laurent.

Judge Marcia G. Cooke, in the United States District Court abuse it discretionary by deny Petitioner motion for leave file timely, on July 30, 2004, in the bankruptcy Court Southern District of Florida.

Mr. Stephen N. Rosenthal attorney for Mr. Hugo A. Martinez, made false claim and committed Affidavit of perjury in the United States bankruptcy court, because Mr. Hugo A. Martinez doesn't have any mortgage, nor any interest, or claim, in Mr. Nicolas S. Laurent's Guardian home, property describe as:

Lot 15, Block 4 of HIGHVIEW GARDENS Section "A" according to the Plat thereof recorded in Plat Book 45 at page 29, of the Public Records of Dade County, Florida. And

The North of 5 Feet of Lot 1, Block 4 of HIGHVIEW GARDENS, according to the Plat Thereof recorded in Plat Book 45 at page 22 of the Public Record of Dade County Florida, Folio Number: 30-2123-010-0140.

The United States bankruptcy court abuse its discretion failed to verify and investigated Mr. Hugo A. Martinez, and Mr. Stephen N. Rosenthal Affidavit of Perjury, false representation claim.

Mason Jares, Ltd v. Peterson v. Peterson, 939 P. 522 (Colo, App. 1997). A void Judgment may be challenge at any time pursuant to C. R.C.P. 60 (b) (3 and must be vacated upon request. Rainsberg v. Klein, 5 P 351 (Colo. App. 1999.

Court are constituted by authority and they cannot go beyond that Power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and order are regarded as nullities, they are not avoidable, but simply void, and this even prior to reversal.

Mr. Stephen N. Rosenthal knowingly made fraudulent representation, verification, or statement under penalty of perjury under section 1746, of Title 28, in or relation to any case under title 11 knowingly, and fraudulent presented false claim, for proof against the estate of Petitioner, Nicolas S. Laurent.

Previously, on September 12, 1996, Mr. Stephen N. Rosenthal, attorney for Mr. Hugo A. Martinez signed Affidavit of Settlement in Pennington Litigation Title Defect, to wit, in the 11th Judicial Circuit Court, Dade County-Miami-Florida, recognized, and acknowledge that his client, Hugo A. Martinez committed fraud in the factum, on March 16, 1993, consequently lost his right Title, interest, and claim forever, in the property locate at 13750 N.W. 7th Avenue, Miami- Florida 33168, -

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[2] " The law is well-settled that a void order or Judgment is void even before reversal," Valley v. Northern Fire & Marine Ins, Co., 254 U.S. 348, S. CT. 116 (1920).

recorded on Harvey Ruvin Clerk official Record Book 17293, at page 2340, Dade County- Miami, Florida.

On March 16, 1993, Petitioner, Nicolas S. Laurent bought a piece of commercial property, to open his office business construction for the price of $ 88, 000.00 dollars, from Mr. Hugo A. Martinez.

Petitioner Laurent paid Mr. Hugo A. Martinez $ 30, 000. 00, plus $ 3, 000. 00, total $ 33, 000. 00, in the closing.

Thereafter, when Mr. Laurent applied for permit, to repair the property; Building Zoning refused to gave the permit, indicated the property is completely abandon, out of public function, need major repaired.

Consequently, Petitioner, Nicolas S. Laurent spent more than $ 45, 000. 00, to put the property in public function, lease the property, now the rent money is in the Court Registry, in the Eleventh Judicial Circuit Court, Dade County - Miami, Florida.

Petitioner Laurent, and the children equity and interest in the Guardian home property is superior to any other parties, and to any other claims.

On March 16, 1993, Mr. Hugo A. Martinez executed a Title Defect Warranty Deed accompanied a promissory note, in fraud in the Factum, and delivered in bad faith, to Petitioner, Nicolas S. Laurent.

Thereafter six month of closing, on October 19, 1993, Mr. Richard L. Pennington and wife Guadalupe filed lawsuit foreclosure Title Defect to wit, in the State Court Eleventh Judicial Circuit, Miami-Florida, case # 92-24742 CA (21). **Pet. App.** 38d

Mr. Richard L. Pennington and wife Guadalupe Pennington claimed the property described above, actually belong to them, not to Mr. Hugo A. Martinez.

After several years of stressful litigation finally, Nicolas S. Laurent's Title Insurance Company settled on behalf of Mr. Laurent as Title Insurance Policy Holder, paid money settlement, to Mr. Richard L. Pennington, and wife Guadalupe to satisfy their valid foreclosure claim, as the real owner, with the right Title of the property described above. **App.** 43d-44d

Consequently, on June 21, 1996, Mr. Richard L. Pennington and wife Guadalupe, First party transfer the Title of the property, to Mr. Nicolas S. Laurent Second party forever, all the right Title, interest, claims, and demand which the said first party in and to the following lot described above, in the 11th Judicial Circuit Court, Dade County, Miami- Florida, recorded in Harvey Ruvin Clerk, on September 23, 1996, Official Record Book # 17360, page 3294, in Dade County, Miami-Florida, Folio # 30-2123-010-0140. **App.** 45d-47d

Mr. Hugo A. Martinez doesn't have any mortgage, nor interest in the Guardian home property.

Petitioner's former bankruptcy attorneys Michael J. Brooks, Michael A. Frank, Rodolfo De La Guardia indicated in the chapter 13 bankruptcy court payment plan, that Hugo A. Martinez mortgage is invalid.

On or about October 1993, Respondent, Stephen N. Rosenthal is the attorney who represented Mr. Hugo A. Martinez, in Mr. Richard L. Pennington **Title Defect** Lawsuit, in the case Number described above.
Mr. Pennington's Litigation against Hugo A. Martinez et, al., cause Petitioner, Nicolas S. Laurent

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[2] A judgment is void if the court acted in a manner inconsistent with due process. A void judgment is a nullity and may be vacated at any time.

major deficit, for the property described above.

Petitioner Laurent, and the Children suffer injury, damage, embarrassment and prejudice, in this case.

Petitioner Laurent work and sweat hard to obtain both of his properties, and the American dreams, but the American dream was taken away from Petitioner, by Respondent, Nancy N. Herkert, Chapter 13 trustee, Hugo A. Martinez, Stephen N. Rosenthal, etc., for prejudice, and bias, toward Mr. Laurent.

United States District Court Judge Marcia G. Cooke erred in the Final order of Dismissal, on November 18, 2005, indicated Petitioner, Nicolas S. Laurent appeals the order allowed the trustee to refund monies back to him, **which is incorrect. App.** 16b-19b

Petitioner, Nicolas S. Laurent Appeals the order granting trustee Motion to redirect payment, to obtained the Guardian home property tax certificates, include the Guardian home property, since Hugo A. Martinez is not a mortgagor and doesn't have any interest in the property.

Petitioner and the children are rightful owner with the true title for the property lot described above.

United States District court Judge Marcia G. Cooke and bankruptcy Court failed to justify, and demonstrate, where Hugo A. Martinez obtained a mortgage or any interest in Mr. Laurent's Guardian home property.

On March 16, 1993, Mr. Hugo A. Martinez executed a Warranty Deed accompanied a Promissory note, for a property that he doesn't have the Title for; which Mr. Laurent's Title Insurance Company Transfer the Title of the property on behalf of Mr. Nicolas S. Laurent from the real Title owner Richard L. Pennington, and wife Guadalupe, first party, to Mr.

Nicolas S. Laurent, second party forever, on June 21, 1996, in the Eleventh Judicial Circuit Court, Dade County-Miami, Florida.

Court of Appeals, and the district court abused its discretion failed to demonstrate where Hugo A. Martinez obtain a mortgage or any interest in Mr. Laurent's Guardian home property, after June 21, 1996.

Respondent, Nancy N. Herkert, and the bankruptcy court failed to justify, without Statement of Verification, and investigation, where Hugo A. Martinez has a mortgage or any interest in Mr. Laurent's Guardian home property.

Petitioner object this matter in so many occasion, in the court.

The actual reasons or statement given by Judge Marcia G. Cooke for these decisions were not sufficient to Justify the reasons for Final order Dismissal the case, and the is no factual basics to support the allegation for the dismissal.

The reasons for dismissal of Petitioner Laurent case did not justify the reasons for doing so.

Consequently, this case should be vacated since the United States District Court failed to obtained evidence from Hugo A. Martinez, etc., to support the statement in the allegation made in court.

Mr. Hugo A. Martinez attorney Stephen N. Rosenthal committed Affidavit of perjury, intrinsic fraud, to obtained rem relief in the Bankruptcy court, on September 6, 2001, and October 5, 2001with a void promissory Note dated March 16, 1993, which his client Hugo A. Martinez executed a Warranty Deed,

accompanied a promissory note, and delivered in bad faith, with malicious intent, to Mr. Nicolas S. Laurent.

Petitioner, Nicolas S. Laurent, and the children never work in the ship or marine, and comply with the term, and condition of the payment plan, in the bankruptcy court, to made his payment to Respondent, Nancy N. Herkert, to paid the creditors, inside the Chapter payment, include creditor Bank Atlantic FSB # 810, Joanne M. Chin. **App.** 27c - 30c

On June 21, 1996, Fidelity National Title Insurance transfer the Title of the property from Real owner Richard L. Pennington, and wife Guadalupe, First party to Nicolas S. Laurent, Second Party forever, in the Eleventh Judicial Circuit Court, Dade County, Miami, Florida, Case # 92-24742 CIV (21) **Pet. App.** 45d- 47d.

United States District Court failed to acknowledge on November 18, 2005; that Mr. Hugo A. Martinez attorney Stephen N. Rosenthal' illegal foreclosure on May 24, 2002, and November 13, 2002, in Petitioner's Guardian home property, both canceled in the state court Eleventh Judicial Circuit Court, Miami, Florida, Case Number: 00 -30948, CA 01(32), recorded on Harvey Ruvin Clerk of Court BK 22494, at page 0146.

United States District Court erred in denied Petitioner Motion for Leave, because Mr. Nicolas S. Laurent complying with Bankruptcy Rules 8002,(a) to filed his motion for Leave, accompany Notice of Appeal, Timely in ten days entry of the order, on July 30, 2004, in the bankruptcy court. **Pet. App.** 25c-26c

Federal Rules 11 U. S. C. Section 323:

The chapter 13 trustee, in a case under this Title is representatives of the estate, to properly administrate the

estates, but not to implicate wrong doing and conceal violation, fraudulent transfer in the automatic Stay inside the Debtor's chapter 13 payment plan, (b) the trustee in a case under this Title Chapter 13 can be sued.

Respondent, Nancy N. Herkert failed to administer Petitioner estates assets properly, in the bankruptcy Court, **and is** incompetent, and unwilling to perform the duties of trustee.

REASONS FOR GRANTING THE WRIT

Petitioner, Nicolas S. Laurent filed this Petition to Supreme Court of the United States to review and grant Petition for Writ of Certiorari, for the order deny Petition for Rehearing filed in the Court of Appeals, on November 29, 2006, and affirmed on August 22, 2006.

This case have merit, and present important issues of Federal law. The first issue arise, in the Chapter 13 bankruptcy Court, which involved creditor Bank Atlantic FSB # 810, who violated the Automatic Stay, inside petitioner's Chapter 13 payment plan., **without relief** from automatic Stay; Second issues involved Court of Appeals vacated and remand the case No: 04-22076-CV-MGC, to the District judge Cooke, that is already disqualify in Petitioner's related case Number: 04-22471-CV, in the United States District Court, Southern District of Florida, on March 9, 2005.

Third issues involves prejudice, without due process, in the court against four minor children, born and live in the United States, **which the court failed** to allowed the Children and petitioner opportunity, to defend their property, in the court at law.

Consequently, Fidelity Title Insurance Company recognized the property belong to Mr. Laurent, Settled on behalf of Mr. Laurent paid money settlement transfer the Title of the property from Mr. Richard L. Pennington, and wife Guadalupe, First party to Nicolas S. Laurent Second party forever, in the State Court Eleventh Judicial Circuit Court Dade County Miami, Florida, on June 21, 1996, recorded on Harvey Ruvin Clerk Book on September 23, 1996 Official Record Book # 17360, page-3294, in Dade County, , Miami Florida, Folio Number: 30-2123-010 -0140. App. 45d- 47d

The foreclosure on May 24, 2002, in the Guardian home is void, which Mr. Laurent filed objection in the state court, Eleventh Judicial Circuit Court, on May 31, 2002.

Mr. Hugo A. Martinez second conspiracy foreclosure made with the Guardian home property taxes, without relief from automatic stay, on November 13, 2002, is also void and cancelled in case Number: 00 -30948 CA-01 (32) recorded on Harvey Ruvin Clerk Book 22494, at page 0146.

Court of Appeals for Eleventh Circuit Ruling is entirely inconsistent with Prior decisions of this court, and other court.

Borg Warner Acceptance Corp, Hall 685 F. 2d 1306 (11th Cir. 1982, Action taken in violation of Automatic Stay are void, and without effect. A creditor may be subject of Court and a fine, and the debtor may be entitle to attorney fees.

Court of Appeals actual reasons or statement given by the panel judges for these decision were

not sufficient to Justify the reasons for opinion given in the case, and the is no factual basics to support the opinion made on August 22, 2006.

This case is very important for greater public importance for the proper administration of justices, it involved abuse discretion, violation in the automatic Stay, bias and prejudice.

Montenay Energy Co. v. Esselen Assoc. Inc., (In re Crysen? Montenay Energy Co.), 902 F. 2d 1098 (2d Cir. 1990) set forth the standard for awarding damages pursuant to code § 362 (h). According to the second Circuit, "(a)ny deliberate act taken in violation of a stay, which the violator knows to be in existence justifies an award of actual damages.
the reasons for dismissal of Petitioner Laurent case did not justify the reasons for doing so.

Consequently, this order should be vacated, since Petitioner, and the children have the right **Title** for the property, and the respondent failed to support the statement, made in court.

There is no record in the Court to demonstrated where creditor Bank Atlantic FSB # 810, obtain any relief from automatic Stay, in Petitioners Chapter 13 payment plan.

Court are constituted by authority and they cannot go beyond that Power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and order are regarded as nullities, they are not avoidable, but simply void, and this even prior to reversal.

The automatic Stay gives the debtor protection from his creditors, preclude creditors from enforcing pre-Petition Judgment against debtor; Anyone who willful violated the stay, in a case of an individual is liable for punitive damage.

In a Chapter 13 the stay remain in effect, for the life of the chapter 13 payment plan.

Chambers v. Goldberg Inc., 501 U.S. 32 111 S Ct 2123 (1991) Federal Judges have inherent power to punish parties, and attorney in contempt, and the right to discipline. There are no requirements that the offensive action need occur, in the presences of judges.

Petitioner, Nicolas S. Laurent filed Notice of Appeal in the United States District Court, to Court of Appeals for Eleventh Circuit on December 21, 2005, and clearly indicated in the Appeal and also in the heading that Respondent, Nancy N. Herkert is a trustee Chapter **13)** not United States Trustee.

This case has great merit, for the proper administration of Justices.

Court of Appeals for Eleventh Circuit abused it discretion, acknowledge the property belong to the children, in the opinion filed on August 22, 2006, yet failed to vacate the United States District Court order in favor of the Guardian home property. **App.** 1a – 3a

Petitioner, Nicolas S. Laurent Guardian and parent of the four children, buy the property, and later transfer the property to the children, which is now called the Guardian home property.

Mr. Laurent is entitle to received the guardian home property taxes, since creditor Bank Atlantic FSB # 810 violated the automatic intentionally, with malicious intent, knowing fully, that Mr. Laurent, a debtor inside the chapter 13 payment plan.

Mr. Laurent filed a Voluntary reorganization payment to keep both of his properties,

Petitioner Laurent did not filed Chapter 13 for Respondent, Nancy N. Herkert to took Mr. Laurent

properties, and assets, to committed fraudulent transfer with petitioner properties for her own interest.

Creditor, Bank Atlantic FSB breach of contract by refused to continue receive payment, from Petitioner inside the Chapter 13 payment, after 4 years, according to the trustee's Motion to Redirect payment filed by Respondent, Nancy N. Herkert on January 2004, in the Bankruptcy court for February 2, 2004, hearing.

On February 2, 2004, and March 1st, 2004, Respondent Nancy N. Herkert, Bank Atlantic FSB # 810, Hugo A. Martinez, Stephen N. Rosenthal failed to appeared at the Notice of hearing, trustee Motion to Redirect payment.

Respondent, Nancy N. Herkert intentionally, dismissed the Chapter 13, with malicious intent, indicated for lack of document, to prevent the fraudulent transfer with the guardian home property taxes certificates from revealing.

On November 13, 2002, When Petitioner Laurent Chapter 13 was fully active and effect, Creditor Bank Atlantic FSB # 810, Joanne M. Chin committed racial prejudices by conspired with Hugo A. Martinez and Stephen N. Rosenthal to used the Guardian home property taxes inside the Chapter 13 payment plan, illegal, to made a second secret illegal foreclosure, in the State Court, without relief from the automatic Stay.

On November 14, 2002, Petitioner filed objection to the foreclosure on November 13, 2002, in the State Court, Eleventh Judicial Circuit Court, Dade County, Miami- Florida.

Proceeding that violated the Automatic Stay are void, and of no effect, Kalb v. Feustein, 308 U.S. 433. 60 S. Ct 343, 346, 84 L, Ed. 370 (1940). The action of the court was not merely erroneous, but was beyond its power, and subject to collateral attack.

Creditor Bank Atlantic waived its rights, when it decided to breach of contract, on November 13, 2002, without relief from the automatic Stay, and the term and conditioning of the binding contract signed with Nicolas S. Laurent, on March 13, 2001, filed on March 20, 2001, in the Federal Bankruptcy Court, to received payment for the Guardian home taxes, inside the payment plan, for 5 years term at 18% interest rate.

River Park Inc., City of Hyland Park, 184 111 2d 290 306, 703, N.E. 2d 883 (1998). The majority of the Federal Circuit has determined that the automatic Stay imposed by the Federal Bankruptcy Code divest a State Court jurisdiction against the debtor assets, after filing of the Petition.

Petitioner, Nicolas S. Laurent complying with the term and conditioning of the contract and the payment plan, to made his payment to Respondent, Nancy N. Herkert, Chapter 13 trustee, to paid the creditor Bank Atlantic FSB # 810, every month, for the Guardian home property tax certificates.

Court of Appeals for Eleventh Circuit, United District Court, abused its discretion failed to Justify where Respondent Hugo A. Martinez, obtain a mortgage or any interest, in the Guardian home property after June 21, 1996, when Fidelity National Title Insurance transfer the Title of the property from Richard L. Pennington, and wife Guadalupe, First party to Nicolas S. Laurent Second party forever, in the State Court Eleventh Judicial Circuit Court Dade County Miami, Florida.

Mr. Hugo A. Martinez and Mr. Stephen N. Rosenthal Foreclosure on May 24, 2002, and November 13, 2002, made in the property, which is now called the Guardian home are **cancelled** in the State Court,

Eleventh Judicial Circuit Court, recorded on Harvey Ruvin Book 22494, at page 0146, in Dade County Miami, Florida.

Court of Appeals failed to justify where Bank Atlantic FSB # 810, Joanne M. Chin obtained relief from stay, in the bankruptcy court, to used the Guardian home property taxes, illegal on November 13, 2002, when Petitioner's chapter 13 payment plan, was fully active, and effect.

Creditor, Bank Atlantic FSB # 810, Joanne M. Chin is not an injured party, since they violate the Automatic Stay, in bad faith, with malicious intent.

On January 22, 2004, Respondent Nancy N. Herkert filed Notice of Hearing and trustee Motion to redirect payment, indicated " Bank Atlantic FSB # 810, refused to continuing received payment, inside the Chapter 13 payment Plan, after 4 years and half, which was irrelevant, since Petitioner complying with the term of the payment plan, to made his payment every month to creditor Bank Atlantic FSB # 810. **App.** 35c-36c Court of Appeals erred indicated the Bankruptcy Order " resolved the practical issue concerning to whom the trustee should pay the funds.

Court of appeals erred because Laurent filed chapter 13 to made the payment to creditor inside the payment plan; Mr. Laurent never filed chapter 7 to gave a trustee power of attorney to liquidate Laurent property, inside the chapter 13 payment plan.

The bankruptcy Court order didn't resolved any practical issue, since it allowed attorney Stephen N. Rosenthal to commit Affidavit of Perjury, intrinsic fraud with a Title defect promissory note, dated March 16, 1993, that his client Hugo A. Martinez executed a Warranty Deed with a promissory note, in bad faith,

with malicious intent, and delivered to Mr. Nicolas S. Laurent.

In People vs. People 211 Cal Rptr. 432, 434 (Cal App, 1985). The district attorney had formerly represented a party in two cases, the court held that the District attorney must be recuses, and his position requires disqualification of his entire office.

This case demonstrates the integrity of the Judicial system, and proper respect for a fair trial, and the right to do due process.

A lawyers 's professional conduct precludes the lawyer from participating in a matter, or in a case in which they lawyer participated personally, and substantially while in private practice.

The bankruptcy Court abused the children XIV amendments right, by failed to gave due process.

The Guardian home property belong to Mr. Laurent who later transfer the property to his Children.
Mr. Laurent work hard and sweat to obtain the property.

On October 10, 2000, Mr. Laurent filed Chapter 13 reorganization payment plan, and indicated in the Chapter 13 payment plan, that Mr. Laurent is the Guardian for the children Guardian home property, which Nancy N. Herkert, the Bankruptcy court, and Bank Atlantic approved and fully aware of this matter.

Mr. Laurent never filed Bankruptcy Chapter 7, only Chapter 13 Bankruptcy payment plan.

Ms. Nancy N. Herkert, chapter 13 trustee, exercise prejudice against petitioner Laurent and the children estates and properties.

On July 30, 2004, Petitioner comply with Rules 8002 (a), filed motion for leave accompanied with Notice of Appeal timely in the bankruptcy Court,

granted by the bankruptcy Court, as well as the district court. **App.** 25c-26c

Thereafter, Petitioner filed Initial Brief in the United States District Court and sent a copy to Respondent -- Nancy N. Herkert by First Class mailed.

Respondent, Nancy N. Herkert failed to filed or serve a Reply Brief in the United States District Court Southern District of Florida.

Consequently, on October 20, 2004, United States District Court Judge Marcia G. Cooke abused its discretion in the Final Dismissal order, case closed indicated the District Court lack subject matter jurisdiction, because Petitioner filed Chapter 7, and didn't filed motion for leave in the bankruptcy Court, to bring this action against Respondent Nancy N. Herkert, which is incorrect. App. 21b - 22b

Previously Court of Appeals vacated the District Court order on August 22, 2005, thereafter Court of Appeals remand the case to the District Court judge Marcia G. Cooke who already disqualify in Petitioner Laurent case.

District court is unable to made fair ruling in Petitioner Laurent case, since the district Judge is already disqualify herself in Petitioner case Number: 04-22471, on March 9, 2005, CV. **App.** 24b

Federal Supreme Court of the United States of America gave jurisdiction to the United States Court Appeals, to corrected the lower court **error.**

The ninth circuit that specifically rejected the reasoning the case, which the trustee, relies for the proposition that a trustee is only liable for Intentional act. Dioguardi vs. Durning 2 Cir. (1994) 139 F. 2d 774. In Panel Review of law de Novo under Kashani, and in

re Cochise College Park 703 F. 2d 1339 (9th Cir 1983), on which the panel in Kashani relied the trustee, and her staff are not immune from suit for allege negligent action that amount in violation of those action.

`Judge Marcia G. Cooke failed to exercise the proper legal in Final order of dismissing the case, on October 20, 2004, and on November 18, 2005.

Constitution Bank vs. Stubbs, 68 F. (3d 685 (3d Cir. 1995. Violation in the automatic Stay is void, and could not invoke the subject matter jurisdiction of the Circuit Court, because the state court lacked the jurisdiction necessary to rule upon.

11 U.S.C. Section 704, the trustee shall be accountable of all property received, examine proof of claims, and object to the allowance of any claim, that is improper.

The District Court has exclusive jurisdiction to all cases under Title 11, in the bankruptcy court involved petitioner, and pertaining to the Estate.

18 U.S.C. § 3057(a), the trustee having reasonable grounds for believing a bankruptcy crimes has been committed, or that an investigation should be held, in connection therewith shall report to the appropriate United States attorney, all the facts and circumstance of the case, the name of the witnesses, and the offense believed to have been committed.

Rule 15 (a) authorizes court to grant leave freely, when justice so require, **absent of prejudice.**

Bank Atlantic FSB # 810 made fraudulent concealment, and fraudulent transfer with the Guardian home property taxes, without relief from automatic, and without petitioner knowledge, and consent.

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4 Act undertaken in willful violation of the automatic stay are void and may expose the violators of monetary sanction & punitive damage pursuant to 11 U.S.C. 362 (h).

11 U.S.C. § 362 (a) (1) (1994), it was created to prevent different creditors from filing action in different court in various attempts to capture the bulk of debtor assets.

Court of Appeals and District Court erred in naming Respondent, Nancy N. Herkert as U.S. Trustee.

Respondent, Nancy N. Herkert is a private individual chapter 13, and not component of Justice Department; and can be litigate for neglect, and prejudice actions, etc. The defendant - Appellee failed to demonstrated evidence to support their motion to dismissed. Judge Marcia G. Cooke failed to exercise the legal standard involved in Final order of Dismissing the case on November 18, 2005, and on December 15, 2005.

Petitioner was not accorded a fair trial, and impartial to which he was entitle under the due process clause of the Fourteenth Amendment.

Furthermore, a motion to dismiss is not supposed to decide the merit of a case.

Motion to dismiss pleading is to be granted sparingly, and with caution.

Petitioner, Nicolas S. Laurent has the right to due process of the law pursuant to 14 amendment to the United States Constitution.

Petitioner has complied with the term, and performed his obligation under the contract. with Bank Atlantic FSB # 810, for the Guardian home property tax certificates.

Kingwood Oil Co. V. Bell 204 F. 2d 8, 13th (7th Cir.

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5. The parties moving for dismissal must show beyond doubt that the petitioner can prove no set of fact in support of his claim (that would entitle to relief, Conley v. Gibson 335 U.S. 41, 45-46 (1959).

1953. A trustee must also ensure that the rights of the bankrupt, as defined by the bankruptcy Code & rules are not abused.

A judgment is void if the court acted in a manner inconsistent with due process. **A void judgment** is a nullity and can be vacated at any time." 261 Kan, at 862.

Court of Appeals is in conflict with Second Circuit.

Supreme Court and the Second Circuit court have emphasized that motion to leave should be given freely, absent of prejudice.

[T]he timely filing of Notice of Appeal is mandatory, and jurisdictional. ' If the notice is not timely filed , the appellate court is without Jurisdiction to hear appeal. Advanced Estimating Sys., Inc. v. Riney, 77 F. 3d 1322, 1323, (11th Cir. 1996).

Petitioner comply and filed his motion for Leave and a notice of Appeal timely within 10 days of the bankruptcy court order.

Min Jin v. Metro Life Ins. Co. 310 F. 3d 84, 102, (2d Cir.2002): Block v. First Blood Association 988 F.2d 344, 350, (2d Cir. 1993 .

State Teachers Retirement BD v. Fluor Corp, 654 F. 2d 843, 856 (2d Cir, 1993).

Burn vs. Imagine Fils Entm't Inc., 16 F.R.D. 381, 385 (W.D. N.Y. 1992 } Elgin, Joliet Eastern Ry Co, v. Industrial Community services 9111 2d 505, 507, 138 N. E. 2 D 553 (1956). Ascon properties Inc., v. Mobil oil Co 866 F. 2d 1149, 1160. 9th Cir. (1989).

Scheur v. Rhodes, 416 U.S. 416 U.S. 232, 236, 40 L 90 94 CT. 1683 (1974). Melrose Park National v. Capitol Bank trust 180 111 App.3d 662, 536 N. E. 104 (1989) Norris v. Estate of Norris 143 111 app. 3d 741, 748, 493, N. E. 2d (121) (1986).

The state Court, Eleventh Judicial Circuit Court Lack jurisdiction over the subject matter, and Lack jurisdiction over the person.

The action on November 13, 2002, were taken knowing of the existence of the automatic Stay.

11 U.S.C. 362 (h) - An individual injured by any willful violation of automatic stay provided by this section shall recover actual damage, including cost, and attorney's fees, and appropriate circumstance may recover punitive damage.

Petitioner prays the Supreme Court of the United States to grant Petitioner Laurent and the children Petition for Writ of Certiorari, since Petitioner and the children are the true legal owner, with the title of the property, and also for reasons discussed above, as well as those set forth, in the Petition.

I, Nicolas S. Laurent do solemnly swear that the above statement is true, and complete to the best of my knowledge.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Nicolas S. Laurent
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Boston, Massachusetts
Tel: (617) 894-9774
Pro Se / attorney

Dated April 16, 2007

APPENDIX TABLE OF CONTENTS

APPENDIX A

Opinion of the United States Court of Appeals for the Eleventh Circuit entered on August 22, 2006.....1a

APPENDIX B

Order of the United States District Court Southern District of Florida Division, entered on November 18, 2005.....16b

Order of District Court Judge Recusal dated March 9, 2005.....24b

APPENDIX C

Transmittal of Motion for Leave to Appeal to Clarence Maddox Court Administrator / Clerk of court.....25c

Fax to Bank Atlantic from Miami Dade County Florida Tax Collection Division, dated December 4, 2002.....31c

Order Denying Debtor's Motion to Modify and Debtor's Emergency Motion for Clarification of the United States Bankruptcy Court Southern District of Florida entered December 24, 2002.....33c

Notice of Hearing and Trustee's Motion to Redirect Payment of the United States Bankruptcy Court Southern District of Florida, entered on January 22, 2004.....35c

Notice of Deposit of Funds with the U.S. Bankruptcy Court Clerk..... 37c

APPENDIX D

Letter to Mr. Nicolas S. Laurent from Koppen, Watkins, Patner & Associates, dated October 13, 1993.....38d

Letter to Mr. Nicolas S. Laurent from Koppen, Watkins, Patner & Associates, dated December 7, 1995.....40d

Letter to Mr. Nicolas S. Laurent from Koppen, Watkins, Patner & Associates, dated February 27, 1996.....41d

Letter to Mr. Nicolas S. Laurent from Koppen, Watkins, Patner & Associates, dated October 10, 1996..... 43d

Quit Claim Deed..... 45d

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
(Entered on August 22, 2006)

No. 05 – 17173
Non – Argument Calendar

D. C. Docket No. 04 – 22076 – CV- MGC

NICOLAS . LAURENT,

Plaintiff - Appellant,

versus

NANCY N. HERKERT,
United States Trustee,

Defendant - -Appellee.

Appeal from the United States District Court
for the Southern District of Florida
(August 22, 2006)

Before DUBINA, HULL and MARCUS, Circuit Judges.
PERCURIAM:

Nicolas S. Laurent, a Chapter 13 debtor proceeding pro se, again appeals the district court's order relating to his motion to proceed with an interlocutory

appeal from the bankruptcy court's Order Granting the chapter 13 Trustee's Motion to Redirect Payment. We previously vacated the district court's understanding that it lacked Jurisdiction. See In Laurent, 149, App'x 833 (11th Cir. Aug. 22, 2005) (not published. We held that the district Court's had jurisdiction to render decision on Laurent's motion. Id, Accordingly, we directed the district court to decide, on remand, whether or not to grant the debtor leave to proceed with an interculotory appeal from the bankruptcy court. On remand, the district court denied leave to proceed. Laurent now appeals that decision. We affirm.

The district court in a bankruptcy appeal functions as an appellate court in reviewing the bankruptcy court's decision. Equitable Life Assurance Soc'y v. Sublett, 895 F. 2d 1381, 1383- 84 (11th Cir. 1980). District court may grant leave to hear appeals of interculotory orders entered by a bankruptcy Judge. orders entered by a bankruptcy Judge. See 18 U.S.C. § 158 (a).

"Because [28 U.S.C. § 158 (a)] does not provide the district court any criteria for determining whether to exercise their discretionary authority to grant leave to appeal, the court [s] look [] to 28 U.S.C. § 1292 (b) which governs discretionary interculotory appeals from the district courts to the Court of Appeals.'

In re Charter Co. 778 F.2d 617, 620 n.5 (11th Cir. 1985). In order to obtain leave to proceed under 28 U.S.C. § 1292 (b) a party must demonstrate that (1) the order present a controlling question of law; (2) over which there is a substantial ground for difference of opinion among courts; and (3) the immediate resolution of The issue would materially advance the

ultimate termination of the Litigation. See 28 U. S. C. § 1292 (b).

Here, the bankruptcy court's order granting the Trustee's motion to redirect payment and ordering that any remaining fund, including those returned from Bank Atlantic, be refunded to Laurent did not meet the criteria warranting leave to file an interculotory appeal. The order did not present any issue of controlling law over which there is disagreement among courts, but rather, it resolve the practical issue concerning to whom the trustee should pay the funds she still held.

Moreover, the order does not materially advance the outcome of the litigation. At that time of the order, the bankruptcy Court had closed the case and discharged the Trustee, and Bank Atlantic, for whom the contested funds had been ear marked, had rejected the funds. Finally, as noted by the district court, resolution on the merits of an appeal of the order to redirect funds would not grant Laurent the relief he sought: Title to the guardianship property had already passed to the Guardian making the Guardian the legal owner. Therefore, the district court did not err by denying leave to proceed with an interlocutory appeal.

AFFIRMED

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
(Entered on November 29, 2006)

No. 05 – 17173 - II
Non – Argument Calendar

E. C. Docket No. 04 – 22076 – CV- MGC

NICOLAS . LAURENT,

Plaintiff - Appellant,

versus

NANCY N. HERKERT,
United States Trustee,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(November 29, 2006)
ON PETITION (S) FOR REHEARING AND PETITION (S) FOR REHEARING EN BANC

Before: DUBINA, HULL and MARCUS, Circuit Judges.
PERCURIAM:

The petition (s) for Rehearing are DENIED and no Judge in regular active service on the court having requested that the court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate procedure), the petition (s) for Rehearing en Banc are DENIED.
ENTERED FOR THE COURT:
/s/
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
(Entered on August 22, 2005)

No. 04-16182
Non – Argument Calendar

D.C. Docket Nos. 04- 22076 - CV-MGS & 00-50881 BKC-PG

IN RE: NICOLAS LAURENT,

Debtor,

NICOLAS LAURENT,

Plaintiff - Appellant,

versus

NANCY N. HERKERT,
Trustee, United States Trustee,

Defendant -Appellee,

Appeal from the United States District Court
for the Southern District of Florida

(August 22, 2005)

Before HULL MARCUS, and WILSON, Circuit Judges.

PER CURIAM:

Nicolas Laurent, a chapter 13 debtor proceeding pro se appeal the district court's dismissal, for lack of subject matter jurisdiction, of his appeal from the bankruptcy court's Order Granting the trustee's Motion to Redirect Payment. The district court concluded it did not have subject matter Jurisdiction because Laurent failed to seek and obtain leave from the bankruptcy court prior to proceeding on appeal.

Laurent argues the district court erred by dismissing appeal because (1) he filed a timely motion for leave to appeal and a timely notice of appeal in the bankruptcy court, and (2) by its transmittal form, the bankruptcy court transferred the case to the district court, pursuant to Laurent's foregoing motion and notice of appeal.

We review determination of law, whether made by the bankruptcy Court or by the district Court, de novo. See Equitable Life Assurance Soc'y v. Sublett. (In Re Sublett), 895 F. 2d 1381, 1383 (11th Cir. 1990). The district court in a bankruptcy appeal function as an appellate court in reviewing the bankruptcy Court's decision. As the second court of review, our review of the district court's decision is entirely de novo. See Id at 1384.

" We review a dismissal for lack of subject matter Jurisdiction de novo.
"Carter v. Rodgers, 220 F. 3d 1249, 1252 n.3 (11th Cir. 2000).

After thoroughly review of the record and careful consideration of the parties' briefs, we concluded the district court erred by dismissing Laurent's appeal for lack of jurisdiction rather than granting or denying leave to proceed with the appeal.

The relevant facts are straightforward. On October 10, 2000, Laurent filed a voluntary bankruptcy petition under chapter 13 of the bankruptcy Code. In his Chapter 13 Schedules, Laurent listed Hugo A. Martinez as a creditor whose interest Laurent described as follows: Lien in real property held as guardian Guardianship held for benefit of children real property held as Guardian for children transferred over 4 years prior to filing. "In the Fourth Amended Chapter 13 plan, Laurent described the following: "Hugo Martinez (Mortgage on guardian home).

This mortgage will be deal with outside the Chapter 13 plan as mortgage is not valid. This debt will be avoided." The Fourth Amended Plan did not provide for payment to Hugo A. Martinez but did provide for payment to Holders of delinquent tax certificates secured on the guardianship home, The Fourth Amended Plan identified Bank Atlantic as one of these tax certificate holders and stated the payment to bank Atlantic would amount to $ 7, 776.22.

Laurent did not file a complaint or motion to avoid Hugo Martinez's Lien on the Guardian home. After notice and an uncontested hearing, on September 6, 2001, the bankruptcy court granted Martinez relief from the automatic Stay to pursue a state court- Claim concerning his right in the Guardian home.

Martinez also was included in two more orders granting relief from the stay to certain creditors. Martinez then filed a mortgage foreclosure action in state court, which resulted in the issuance of a certificate of Title, in Martinez's name, for the guardianship property.

During the pendency of the bankruptcy action, Martinez continued to make payments on the delinquent tax certificates secured by the property, but Bank Atlantic, pursuant to the automatic Stay provision, refused to accept the payments, instead forwarding to the chapter 13 trustee.
The trustee, acting with explicit court authorization, then resubmitted the payment to Bank Atlantic, But Bank Atlantic refused the funds again relying on the automatic Stay.

After Laurent moved on numerous occasions to modify or amend clarification of the chapter plan, and the trustee filed multiple notices of delinquency, resulting from Laurent's failure to make the required payment under the fourth Amended Plan, and failure to provide requested documentation, on January 7, 2004, the district court entered an order which "dismissed with prejudice to the debtor filing any bankruptcy proceeding for a period of six (6) months from the date hereof. The court subsequently denied numerous motions by Laurent concerning the filing of Amended Plan, and attempt to file a separate adversary proceeding.

On June 18, 2004, the Bankruptcy court entered an order closing the case and discharging the Chapter 13 Trustee. Laurent subsequently tried to appeal from this order, but did so only after the 10th day period specified

in Bankruptcy Rule 8002 had expired. On July 2, 2004, the bankruptcy court dismissed the notice of appeal as untimely.

Thereafter, on July 20, 2004, the bankruptcy court entered an order allowing the Trustee to release fund that Bank Atlantic had refused because the account was paid in full. The order directed the trustee to refund any remaining funds, which included the guardian property payments returned to the Trustee from Bank Atlantic, to Laurent.

Ten days Later, on July 30, 2004, Laurent filed a "Motion to leave Appeal to District Court." On August 17, 2004, apparently without a ruling by the district court on Laurent 's outstanding "Motion to Leave," the Clerk of Court for the Southern District of Florida Bankruptcy Court transmitted the Motion and Laurent's Notice of Appeal to the district court pursuant to a form order entitled "transmittal of Motion for leave to Appeal "That same day, the clerk of court for the Southern District of Florida file stamped a box on the transmittal form entitled "bankruptcy Rule 8003 Acknowledgement of Assignment in District Court.
"

Finally, on October 20, 2004, the district court, pursuant to its sua sponte review of the record, determined that it lack jurisdiction because Laurent had not obtained leave from the bankruptcy court prior to proceeding with his appeal.
Relying on our decision in Carter v. Rogers, 220 F. 3d 1249 (11th Cir. 2000), the district court dismissed the case for lack of our jurisdiction. In its dismissal order, the court stated: "The docket in the bankruptcy case is devoid of any motion for Leave to bring suit district court against the Chapter 13 trustee or any order granting leave to do so." This appeal followed.

District courts have jurisdiction to reviews appeals from Final bankruptcy court judgments, order, and decrees. 28 U.S.C. § 158 (a). Section 158 (a) (3) also authorized a district court to grant leave to appeal an interculotory order from a bankruptcy court, but requires a party to obtain Leave prior to proceeding. To appeal a bankruptcy court's interculotory order, a party must filed notice of appeal, accompanied by a motion for leave to appeal.

See Fed. R. Bankr. P. 8001 (b). Even if a motion for leave to appeal is not filed, but a notice of appeal is timely filed, " the district court may grant leave to appeal or directed that a motion for leave to be filed... Unless an order directing that a motion for leaves to appeal be filed provides otherwise, the motion shall be filed within 10 days of entry of the order." Fed. R. Bankr. P. 8003 (c) (emphasis added).

The Bankruptcy Rules do not expressly provide the time for appealing an interculotory order, but Rules 8001 (b) states an interlocutory appeal " shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule. ''Fed. R. Bankr. P. 8001 (b) In turn, subsection (a) governing the manner for appealing as of right, provides an appeal ''shall be taken by filing a notice of appeal...within the time allowed by Rule 8002. ''Fed. R. Bankr. P. 8001 (a). Rule 8002 states that a notice of appeal must be filed within 10 days of the date of the entry of the order appealed from. See Fed. R. Bankr. P. 8002 (a). ''
[T]he timely filing of a notice of appeal is " mandatory and jurisdictional.' If the notice is not timely filed, the appeal court is without jurisdiction to hear the appeal". ''Advanced Estimating Sys. Inc. v. Riney, 77 F. 3d 1322, 1323 (11 th Cir. 1996) (quoting Griggs v.

Provident Consumer Disc. Co., 459 U. S. 56, 61, 103 S. Ct. 400, 403, 74 L. Ed. 225 (1982)).

Here, the record reveals that the Trustee filed a "Motion to Redirect," which the bankruptcy court granted on July 20, 2004. Within 10 days of the bankruptcy court's order, on July 30, 2004, in the bankruptcy court, Laurent filed both a motion for leave to appeal and a notice of appeal. Thereafter, on August 17, 2004, the bankruptcy court transferred the case to the district court, pursuant to a form entitled "Transmittal of Motion for Leave to Appeal."

On this form, the bankruptcy court stated that the "Order to be Appealed" was the "Order Granting Trustee's Motion to Redirect Payment.' The bankruptcy court also noted on the form that it was transmitting Laurent's Motion for Leave to Proceed and notice of Appeal, along with a copy of the docket sheet, to the district court. The district court, acting pursuant to Rule 803, confirmed receipt of the case.

It is clear that, after the bankruptcy court granted the Trustee's motion, Laurent timely filed a notice of Appeal and a Motion for Leave to proceed on appeal. We observe, however, that Laurent's motion for leave did not comply with the requirements of Rule 8003. See Fed. R. Bankr. 8003 (a) (enumerating contents of motion for leave to appeal a bankruptcy court's interlocutory order, under 28 U. S. C. § 158 (a). However, such non- compliance is of no consequence

here because he filed a timely notice of appeal from which the district court could have, pursuant to Fed. R. Bankr. P. 8003, granted leave to appeal or direct that a motion for leave to appeal be filed.

" The district... court may also deny leave to appeal but in doing so shall consider the notice of appeal as a motion for leave to appeal. " Fed. R. Bankr. P. 8003 (c) (emphasis added). We note that a district court's leave to proceed on appeal, pursuant to 28 U. S. C. § 158 (a), is different from a bankruptcy court's leave to bring suit in the district court, which " a debtor must obtain before initiating an action in district court when that action is against the trustee or other bankruptcy - court appointed officer, for acts done in the act's official capacity."

Carter, 220 F. 3d at 1252 (internal citations omitted). It appears from the district court's or deer that the court construed Laurent's case as presenting the latter situation, when, in fact, Laurent's motion was for leave to appeal.

In this case, neither the bankruptcy court nor the district court rule on Laurent's timely, albeit non – conforming, motion for leave to appeal. Moreover, the district court did not consider Laurent's timely notice of appeal as a motion for leave to appeal, as it is authorized to do under Rule 8003 (c). Instead, pursuant to the trustee's motion to dismiss, the district court concluded it lack jurisdiction over the appeal because Laurent had not obtained leave of the bankruptcy court prior to pursuing this appeal.

In response, Laurent highlight that in the bankruptcy court, he had timely filed his notice of appeal and sought Leave, via his" Motion to Leave," prior to proceeding with his appeal. Notwithstanding the fact that Laurent timely appeal to the district court, no order was ever entered on his motion for leave, nor was his notice of appeal construed as a motion for leave.

This situation did not deprive the district court of jurisdiction, within the meaning of our decision in Carter, since the procedural posture of the instant case in the district court present a request for discretionary interculotory review, **not** the initiation of new action against the trustee, as in Carter. Based on our own review of the record and construing Laurent's pro se filings liberally, we conclude that Laurent's request for Leave to appeal and his notice of appeal complied with

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[1] The bankruptcy court property transmitted the motion for leave to proceed on appeal to the district court since both Rule 8003, and the Jurisdiction - conferring 18 U.S.C. § (a) discuss obtaining the district court's leave.

the timing requirements for appealing to the district court the bankruptcy court's Order Granting Trustee's motion to redirect Payment. Cf. Fed. R. Bankr. P. 8001 (a), 8002 (a) Carter, 220 F. 3d at 1252 -53. The district court's construction of Laurent 's notice of appeal as a new and separate action against the Trustee, filed without leave of the bankruptcy court is belied by the face of Laurent's notice of appeal, from which we find it clear Laurent was Seeking Leave to Appeal the decision granting the Trustee's motion to " Redirect Payment." Thus, the district court erred by finding the record devoid of a request for leave, or at least, by failing to deny interlocutory review, rather than dismissing for lack of jurisdiction.

Again, Laurent is a pro se litigant, whose pleadings are construed liberally. [2]
On this record we are satisfied Laurent followed the proper procedure for appealing to the district court from the bankruptcy court 's Order Granting Trustee's Motion to Redirect Payment. It was within the district court's

[2]See Tannenbaum v. United States, 148 F .3d 1262, 1263 (11th Cir. 1998) (" Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed" of Powell v. Lennon, 914 F. 2d 1459, 1463 (11th Cir. 1990) (" In the case of a pro se,... the court should construe the complaint more liberally than it would format pleading drafted by lawyers.").

discretion to grant or deny leave to proceed with the appeal, pursuant to either Laurent's non - conforming motion for Leave to proceed or, pursuant to Rule 8003 (c), by construing Laurent's timely filed Notice of appeals as such motion . See Chrysler Fin. Corp v. Powe, 312 F. 3d 1241, 1245-46 (11th Cir. 2002) (noting that "district court's discretion to entertain an interculotory appeal form the bankruptcy court is analogous to the court of Appeals' discretion to entertain a Rule 23 (f) appeal from the district court"). Accordingly, we vacate and remand for the district court to consider whether to grant or deny leave to proceed with the appeal from the bankruptcy court's Order.

VACATED AND REMANDED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA,
MIAMI- DIVISION
(Entered on November 18, 2005)

Case No: 04 – CV – 22076 – COOKE / BROWN

NICOLAS S. LAURENT, et, al.,

Plaintiffs / Appellants.

vs.
UNITED STATES TRUSTEE,
NANCY N. HERKERT, et al

Defendant / Appellees.
_____/

FINAL ORDER OF DISMISSAL
ORDER DENYING APPELLANT'S MOTION FOR LEAVE TO APPEAL

THIS CAUSE came before the Court upon the Eleventh Circuit Court of Appeals remand to the District Court for a determination as to whether the Court should grant or deny Appellant's Motion for Leave to Appeal from the Bankruptcy Court's Order, date July 20, 2004.

The Court having reviewed the motion and being otherwise advised of the premises, it is hereby, ORDERED AND ADJUDGED that the Appellants' motion is **DENIED.**

1. Background

The Appellants seek to appeal the Bankruptcy Court's ruling that allowed the Chapter 13 Trustee to refund monies to Appellant, Nicolas S. Laurent, which a secured creditor refused to accept. As outlined in the Circuit Court opinion, Mr. Laurent filed a Chapter 13 bankruptcy on October 10, 2000. The agreed upon bankruptcy plan provided that the tax lien on the guardianship property be paid, but did not provide for mortgage payments on this property to the mortgage holder. Mr. Hugo Martinez.

On or about September 21, 2001, Mr. Martinez was granted leave from the automatic stay and thereafter received a certificate of title for the guardianship property after a foreclosure sale. As the new title holder of the property, Mr. Martinez paid the amount due to cure the tax lien to the secured creditor, Bank Atlantic.

In accordance with the Bankruptcy Court's Order, the Chapter 13 trustee attempted to make payments to Bank Atlantic to cure the tax lien but payment having been made by Mr. Martinez, Bank Atlantic refused payment.

After several exhaustive hearings the Bankruptcy Court determined that the monies originally earmarked to cure the tax lien, should be returned to Mr. Laurent as the guardianship property was no longer in his possession. Mr. Laurent has refused to accept these monies and they remain deposited with the Clerk of the Court.

11. Analysis

District courts are authorized to grant leave to hear appeals of interlocutory orders entered by a

bankruptcy judge, see 28 U.S .C. § 158 (a), but it is clear that such leave should only be granted if there is present, one or more of the statutory or judicially created exception to the general rule, that only final orders are appeal able. See, e.g. United States Tr. v. P H M Credit Corp., 99 B. R. 762, 767 (E. D. Mch. 1989) (district courts should allow an interlocutory appeal" sparingly, since interculotory bankruptcy appeals should the exception, rather than a rule").

"Because [28 U. S. C. § 158 (a),] does not provide the district court any criteria for determining whether to exercise their discretionary authority to grant leave to appeal, the court, [s] look[] to 28 U. S. C. § 1292 (b) which governs discretionary interlocutory appeals from the district courts to the court of appeals. In re Charter Co., 778 F . 2d 617, 620 n. 5 (11th Cir. 1985).

In order for the Court to grant discretionary review pursuant to 28 U.S.C. § 1292 (b), a party must demonstrate that (1) the order presents a controlling questions of law (2) over which there is a substantial ground for difference of opinion among courts, and (3) the immediate resolution of the issue would materially advance the ultimate termination of the litigation." In re Celotex Corp., 187 B. R. 746, 749 (M. D. Fla. 1995).

In the instant matter, even if the Court were to find that the Bankruptcy Court erred in ordering the Chapter 13 Trustee to refund monies to the Appellant, Mr. Laurent would not obtain any relief as the subject property has been foreclosed on. Mr. Martinez, having made the requisite payment, is the legal title owner of the guardianship property. This issue presented by the Appellants does not meet the criteria set forth in Celotex. The Bankruptcy court's order does not prevent a controlling question of law, a question where there is

a disagreement between the courts, and most certainly would not materially advance the outcome of this litigation. As such the Appellant's Motion for Leave to Appeal must be denied.

DONE AND ORDERED in chambers in Miami, Florida, this 18 day of November 2005.

/s/
THE HONORABLE MARCIA G. COOKE
United States District Court Judge

cc:
All counsel of Record
Nicholas Laurent
P.O. Box 693631
Miami, Fl 33269

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA,
MIAMI- DIVISION

(Entered on December 15, 2005
Case No: 04 – CV – 22076 – COOKE / BROWN

NICOLAS S. LAURENT, et, al.,
Plaintiffs / Appellants.

vs.

UNITED STATES TRUSTEE,
NANCY N. HERKERT, et, al,
Defendant / Appellees.
/

ORDER DENY PLAINTIFF'S MOTION TO ALTER OR AMEND FINAL ORDER OF DISMISSAL

THIS CAUSE came before the Court upon the plaintiff's Motion to Alter or Amend Final Order of Dismissal Order Denying Appellant's Motion for Leave to Appeal [D. E.41] filed November 25, 2005. The court having reviewed the motion and being otherwise advised of the premises, it is hereby.

ORDERED AND ADJUDGED that the plaintiff's motion is **DENIED.**

DONE AND ORDERED in chambers in Miami, Florida, this 15 day of December 2005.

/s/
The Honorable Marcia G. Cooke
United States District Court Judge

CC: All Counsel of Record
Nicholas Laurent
P.O. Box 693631
Miami, Fl 33269

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA,
MIAMI- DIVISION

(Entered on October 20, 2004)

Case No: 04 CIV – 22076 – COOKE / MCALILEY

In re:

NICOLAS S. LAURENT
Debtor,
_____/

NICOLAS S. LAURENT, et, al.,
Appellants.

CLOSED CIVIL CASE

vs.

UNITED STATES TRUSTEE,
NANCY N. HERKERT, et al

_____/

FINAL ORDER OF DISMISSAL AND DENYING ALL PENDING MOTIONS AS MOOT

THIS CAUSE come before the Court upon a sua sponte review of the record in the above captioned matter. The Debtor / Appellants in this matter have brought a complaint against the court appointed Chapter 13 Trustee, Nancy N. Herkert.

The law in the Eleventh Circuit require a debtor to obtain leave of the bankruptcy court before initiating an

action in district court when that action is against the trustee or other bankruptcy court appointed officer, for acts done in their official capacity. Carter v. Rogers, 220 F . 3d 1249 (11th Cir. 2000)(chapter 7 debtor required to obtain leave of bankruptcy court before he could bring suit in district court against former Chapter 7 trustee and company that trustee and bankruptcy court appointed to conduct sale). The docket in the bankruptcy case is devoid of any motion for leave to bring suit in the district court against the Chapter 13 Trustee or any Order granting leave to do so. The Court having examined the record and being otherwise advised of the premises, it is therefore,

ORDER and ADJUDGED as follows:

This matter is DISMISSED WITHOUT PREJUDICE. All pending motions are

DENIED AS MOOT.

DONE and ORDERED in chambers at Miami, Florida, this 20 day of October, 2004.

/s/_____
THE HONORABLE MACIA G. COOKE
UNITED STATES DISTRICT JUDGE
cc:

The Honorable Magistrate Judge Chris M. McAliley
All Counsel of record.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI - DIVISION
(Entered on November 10, 2004)
Case No: 04 -CV 22076 – COOKE / BROWN
IN RE DEBTOR NICOLAS S. LAURENT
Appellant,

vs.

UNITED STATES TRUSTEE
NANCY N. HERKERT
Appellee

ORDER DENYING APPELLANT'S MOTION TO ALTER OR AMEND FINAL ORDER OF DISMISSAL AND DENYING ALL PENDING MOTIONS AS MOOT AND APPELLANT'S MOTION FOR CERTIFICATION

THIS CAUSE came before the court upon Appellant, Nicolas Laurent's Motion to Alter or Amend Final order of Dismissal and Denying All Pending Motions as Motion as Moot and Appellant's Motion for Certification **[D. E. 18]**, FILED October 29, 2004. The Court having examined the record and being otherwise advised of the premised, it is therefore, ORDERED and Adjudged that Appellant's Motions are DENIED.

DONE and **ORDERED** in chamber at Miami, Florida, this 10 day of November 2004.

/s/
The Honorable Marcia G. Cooke
UNITED STATES DISTRICT JUDGE

cc: Nicolas S. Laurent
P.O. Box 693631
Miami, Florida 33269 All counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
(Entered on March 9, 2005)

CASE No. 04-CIV- 22471- COOKE/MCALILEY

NICOLAS S. LAURENT, et, al.,
plaintiff

vs.

NANCY N. HERKERT, TRUSTEE,
et, al.,
Defendants
_____/

THE UNDERSIGNED JUDGE,. to whom the above - styled case has been assigned, hereby recuses herself for reassignment pursuant to pursuant to 28 U. S. C. § 455 (a) and local rules 3.6.

DONE AND ORDERED in Chambers at Miami-Florida, this 8th day of March 2005.

/s/
THE HONORABLE MARCIA G. COOKE
UNITED STATES DISTRICT COURT

In accordance with the Lord Rules for the Southern District, providing for the random, and equal of cases, this cases will be reassigned to the calendar to the calendar of Joan A. Lenard.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www. flsb.uscourts. gov
Entered on July 21, 2004

In re: In a Chapter 13 proceeding
Case Number 00-50881-PGH
NICOLAS S. LAURENT Adv. Case Number ____
County of Residence
Principle
Debtor / Place of Business Dade

TRANSMITTAL OF MOTION FOR LEAVE TO APPEALTO CLARENCE MADDOX COURT ADMINISTRATOR / CLERK OF COURT.

The party or parties included In the Motion:

Movant /
Appellant (S) Nicolas S. Laurent
Attorney Pro Se
POB 693631
Miami, FL 33269

Respondent
-Appellee(S) _____ **Attorney:** _____

Title & Date of order to be appeal: Order Granting trustee Motion to Redirect.
Entered on Docket Date July 21, 2004 Docket No. 140
[√] Motion for Leave to Appeal [ ] Respondent's Answer
[√] **Notice of Appeal** [ ] Movant's Reply
[√] Copy of Docket
[ ] **Other** _____

KAREN EDDY, CLERK OF COURT
By:HS Montyglard
Deputy Clerk, USBC
Telephone No: 654-769-5700

Dated Aug. 17, 2004

Bankruptcy RULE 8003 Acknowledgment 0f Assignment in District Court

District Court Case Number: 04-22076 Civ-Cooke /McAliley

CLARENCE MADDOX
COURT ADMINISTRATOR / CLERK

By: /s/
Deputy Clerk, USDC
Telephone No: _____

USDC
ATTORNEY FOR MOVANT
ATTORNEY FOR RESPONDENT

B 10 Official Form 10 Rev. 1292

United States Bankruptcy Court Southern District Florida Entered on March 21, 2007	PROOF OF CLAIM DADE CNTY
In re (Name of Debtor) Laurent, Nicholas	Case Number: 00-50881 CH 13
Note: This form should not be useful to make for an administrative expense arising after the commencement of the case. A request of payment of an administrative expense may be filed pursuant to 11 U. S. C.. S 503.	
Name of Creditor The person or entry to whom the debtor owed money or property. BANK ATLANTIC _____ Names and address where Notices should be sent BANK ATLANTIC Att: Joanne Chin P.O. Box 5707 Ft Lauderdale, Fl 33310 Telephone No. (954) 760-5517	{) Check box if you aware that anyone else has. file the proof of claim relating your claim. Attach copy of statement giving particulars. ( ) Check box if you have never received any notices from the bankruptcy Court in this case. ( ) Check box if the address differs from the address on the envelope sent to you by the court.

1. BASIS FOR CLAIM	
{ } Goods sold { } Services performed { } Money Loaned ( ) Personal Injury wrongful death / { X } Taxes Property Florida Statutes Sec 197- 122 { }Other (Describe briefly	{ } Retiree benefits as defined in 11 U. S. C. § 1114 (a) { }Wages, salaries, and compensation (fill out Blow Your social security ____ Unpaid compensations for service performed From _____ to _____ date date
2. DATE DEBT WAS INCURRED January 1997 TOTAL AMOUNT OF Claim At Time $_____ $ 15, 941.39 for 60 :nos. plan CASE FILED: Unsecured) Secured priority [Check this box if claim including prepetition charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.	3.IF COURT JUDGMENT, DATE OBTAINED

Classification Claim. Under the bankruptcy code all claims are classified as one or more of the following. (1) (2)Unsecured non-priority, (2) Unsecured priority (3) Secured, It is possible for part of claim to be in one category, and part in another

(√) Secured claim $ 7, 776, 521* 18% yrly interest accrues mthly, Attach of evidence of perfection of secured interest, Brief Description of Security Interest, brief description of collateral

(√) Real Estates [ ] Motor vehicle, [ ] other describe briefly) The county doesn't provide written documents please check the tax Roll.

Amount of arrearage or other charges included in secured claim above if any $_____

[ ] Unsecured Nonpriority Claim $ _____

A claim is unsecured if there is no collateral or lien of the property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

[ ] Unsecured Priority Claim $ _____

Specify the priority of the claim.

[ ] Wages, salaries or commission (up to $ 2000), earned not more than 90 days before filing of the bankruptcy petition cessation of the debtor's business whichever is outlined) - 11 U.S.C. **§ 507 (a) (3)**

[ ] Contributions to an employee benefit plan-U.S.C. § 507(a) (4).

[ ] Up to $ 900 of deposits toward purchase, lease or rental property or services for personal, family, or household use- 11 U.S.C.§ 507 (a) (3)

[ ] Taxes or penalties of governmental 11 U.S.C.§ 507 (a) (7)

[ ] Other 11 U.S.C.§ 507 (a) (2), (a) (5) describe briefly.

	15,941.39 for 60 mos. plan Total

6. CREDITS AND SETOFFS: The amount of all payment has been credited and dedicated for the purpose of making this proof of claim. In filing the claim, claimant has deducted all the amount that claimant owes to debtor.

7. SUPPORTING DOCUMENTS: Attach a copies of supporting document such as promissory note purchased orders, invoices, itemized statements of running account, contracts, court judgment of evidence of security interest.

If the documents are not available. explain (See Box 4 with "). If the documents are voluminous, attach a summary.

8. TIME STAMPED COPY: To receives and acknowledgement of the filing of your claims, enclosed a self-addressed envelope and copy of this proof of claim.

Date 3 / 13 / 01	Sign and print the name of Title, If am of the creditors of other person authorized to file this claim (attach copy of power of attorney if any) /s/ Joanne M. Chin Vice President for Bank Atlantic

Penalty for presenting fraudulent claim: Fines of up to $500, 000, or imprisonment for up to 5 years, or both 18 U.S.C. SS 152 and 3571.

ALL PROOF OF CLAIMS ARE SUBJECT TO ADDITIONAL TAX / CHARGES AND INTEREST AS THEY ACCRUE.

MIAMI DADE COUNTY FLORIDA
TAX COLLECTION DIVISION
BANRUPTCY UNIT
140. W FLAGLER STREET, ROOM 1403
MIAMI, Fl 33130-1575
Telephone (305) 375- 5707
Fax (305) 375-4601

December 4, 2002

VIA FAX NO.TO BANK ATLANTIC (954) 760- 5524
& Nancy N. Herkert, Trustee (954) 443-4452

810
BANK ATLANTIC FEDERAL SAVING BANK
JOANN CHIN- TAX CERTIFICATES DEPARTMENT
P.O. BOX 5707
FORT LAUDERDALE, FL 33310-8606

RE: NICHOLAS S. LAURENT, CASE NO. 00-50881-PGH
R/E FOLIO: 30-2123-010-0140,
DEMAND FOR RETURN REDEMPTION PAYMENT FOR
TAX DEED APPLICATION - TC - 47226 (97-22479,) 98-21050, & 99-24026)

Dear Ms. Chin:

By means of this letter, the Tax Collector is requesting the return of the redemption payment issued by our office on May 24, 2002, in the total amount of **$ 10, 115, 34,** for the above referenced Tax Deed application. As we have discussed at length, this property is protected under the Bankruptcy Code, and satisfaction of the Tax Deed Application held by Bank Atlantic was provided in the confirmed Plans.

The Trustee informed me (on 11 / 26 / 02) that the refund check admitted by you would be returned immediately provided you send a letter requesting the return of such funds. Thereafter, the monthly plan payment will continue, in the normal course. -

To allow the bankruptcy process to continue without disruption, Please remit the redemption payment at once. Should you want to discuss this matter Further, please call me at (305) 375- 5707. Thank you so much for your willingness to resolve this matter in an amicable way.

Sincerely,

/s/_____

ELSA C. MACHADO
PARALEGAL COLLECTOR SPECIALIST
E - mail: oem @ miamidade .gov

CC. Nancy N. Herkert Standing Chapter 13 Trustee
Nicholas S. Laurent Debtor,

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(Entered on December 24, 2002)
CASE NO: 00-50881 BKC-PGH
CHAPTER 13

IN RE
NICHOLAS LAURENT
SS - 9130

_____/

ORDER DENYING DEBTOR'S MOTION TO MODIFY AND DEBTOR'S EMERGENCY MOTION FOR CLARIFICATION

THIS CAUSE came on to be heard on December 5, 2002 upon the debtor's Motion to modify plan and Emergency Motion for Clarification and the court having heard the argument of the trustee, and the debtor, and the court being otherwise fully advised in the premises, the court finds.

(a) that there was no overpayment of attorneys fees made in this case.

(b.) **that the Trustee, Bank Atlantic and Miami-Dade County Tax Collector have resolved the issue** regarding the pre-payment of the Tax Certificate) and

(c) that the debtor failed to filed a modified plan in conformance with the bench ruling of the court made on November 7, 2002, and therefore it is ORDERED AS Follows:

1. The motion to modify is denied without prejudice.
2. The Emergency motion for Clarification is denied.
3. **The trustee is authorized to return to Bank Atlantic the sum of $ 4, 356.58,** and to continue disbursing funds pursuant to the plan in the normal course.

4. Bank Atlantic shall return to the Miami-Dade Tax Collector $ 10, 115. 34 less the $ 6. 25 redemption fee that Bank Atlantic received from Miami Dade County with regard to the unapproved redemption of the tax certificate is this case.

DONE AND ORDERED in the Southern District of Florida this 24th of December, 2002.

/s/_____
PAUL G. HYMAN
UNITED STATES BANKRUPTCY JUDGE

COPIES FURNISHED TO:

NANCY N. HERKERT
NICOLAS LAURENT
MIAMI DADE COUNTY TAX COLLECTOR
BANK ATLANTIC

NANCY N. HERKERT, ESQUIRER is direct to mail a conformed copy of this order to creditors and interested parties immediately upon received.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(Entered on January 22, 2004)

Proceeding Under Chapter 13

CASE NO.: 00-50881- BKC-PGH

IN RE:

NOTICE OF HEARING AND
TRUSTEE'S MOTION TO REDIRECT PAYMENT

YOU ARE HEREBY NOTIFIED that a hearing will be held on February 2, 2004, at 9: 30 a.m. at 299 East Broward Boulevard, Courtroom 308, Ft Lauderdale, Florida 33301 to determine the trustee's Motion to Redirect Payment as Follows:

The Creditor
810 BANK ATLANTIC, FSB has returned a disbursement check. and sent to the trustee Correspondence indicating **that they refuse** payment on the account because the account was paid full.

The trustee moves to redirect payment to reflect that Creditor:
810 Bank Atlantic FSB
will not any further plans payment and that the funds designated for the above named creditors will be distributed pro rata to general unsecured creditor or, if none, to the debtor.
The trustee proposes that all other items of the confirmed plans remain the same.

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Hearing and Motion to Redirect payment was mailed Jan 21, 2004, to the parties listed below.

/s/_____

Nancy N. Herkert. Esquire
Standing Chapter 13 Trustee
P.O. Box 279806
Miramar, Fl 33027-9806
Telephone: (954) 441 - 4402
Florida Bar No. 441

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
(Entered on November 10, 2004)

IN RE: Case No. 00-50881- BKC PGH
CHAPTER 13

NOTICE OF DEPOSIT OF FUNDS WITH THE U. S. BANKRUPTCY COURT CLERK

NOTICE IS HEREBY GIVEN THAT:
(XX) The trustee has a balance of $ 4, 681, 64 remaining in her bank account which represents unrepresented checks drawn and mailed to debtor's /creditor (s) in the above named case. Your trustee has made a good faith effort to verify the correct mailing address for said debtor ('s) Creditor (s) and deliver the funds before presenting this notice. More than sufficient time has passed for these checks to be presented for payment.

( ) The trustee has a balance of $ 00 remaining is her bank account which represent small dividends as defined by FRBP 3010.
Attached and made a part of this notice is list pursuant to FRB 3011 of the name, claim numbers and addresses of the debtor (s) creditor (s) and the amounts to which they are entitled.

WHEREFORE, Your trustee hereby gives notice that the above stated sum has been deposited with the clerk of U. S. Bankruptcy Court, Southern District of Florida, to affect closing of the estate.

Date: 11/ 09/ 04 /s/
NANCY N. HERKERT
CHAPTER 13 TRUSTEE

KOPPEN, WATKINS, PATNERS & ASSOCIATES
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

REPLY TO
700 NORTHEAST 90 STREET
MIAMI, FLORIDA 3138-3206
TELEPHONE: (305) 754-5442
1002
TELEFAX: (305) 757-6736

ANNEX
BY APPOINTMENT ONLY
MIAMI - FLORIDA 33138
TELEPHONE:(305) 759-

R. Daniel Koppen
Attorney at law

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ARTICLE NO.: P 283 550 848

October 13, 1993

Mr. Nicolas S. Laurent
1915 N.W. 134 Street
Miami, Florida 33167

In Re: Property located at 13750 N.W. 7th Avenue, Miami, Florida

Dear Mr. Laurent:

The office of the undersigned has been requested by your Title Insurance Company to assist you in resolving a Title claim that has been made against property, in which you purchased from Mr. Hugo A. Martinez on March 16, 1993. I expect that you will be soon be served with a complaint alleging that a prior owner Mr. Buel Carter sold the property to more than one person.

I do not know all the particulars, but stand ready to assist you, at the expense of the of the Title Company, once you served of course, you may first contact your private attorney: but if you so elect, kindly provide him with a copy of this letter In any event, once served, promptly make arrangements to deliver a copy of the complaint to your private counsel, or our office.

Verily truly yours

KOPPEN, WATKINS PATNERS & ASSOCIATE, a professional Association

R. DANIEL KOPPEN.

KOPPEN, WATKINS, PATNERS & ASSOCIATES
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

REPLY TO
700 NORTHEAST 90 STREET
MIAMI, FLORIDA 3138-3206
TELEPHONE: (305) 754-5442
TELEFAX: (305) 757-6736

ANNEX
BY APPOINTMENT ONLY
MIAMI - FLORIDA 33138
TELEPHONE: (305) 759-1002

PHILLIP CALTON III
ATTORNEY AT LAW

December 7, 1995
Mr. Nicholas S. Laurent
13750 N.W. 7th Avenue
Miami, Florida 33168
In Re: Trial date
Pennington vs. Laurent, et al.,
Case No: 92-24742 CA 21

Dear Mr. and Mrs. Laurent

Please be advised that the above style case had been set for trial for a two (2) week period from January 2, 1996, through January 12 1996. It will be necessary for you and your wife to attend the trial. Please remain on standby for two weeks period. The court will notify us as to the exact date, and time of the trial.

Upon receipt of this letter please **Immediately** contact either Daniel Koppen, Esquire, or the undersigned prior to trial. Your cooperation to this matter is greatly appreciated, since your property rights may be affected by the outcome of the case.

Very truly yours
KOPPEN, WATKINS, PATNERS &
ASSOCIATES, a Professional Association
PHILLIP CARLTON III, ESQUIRE
PC Yii

KOPPEN, WATKINS, PATNERS & ASSOCIATES
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

REPLY TO
700 NORTHEAST 90 STREET
MIAMI, FLORIDA 3138-3206
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MIAMI - FLORIDA 33138
TELEPHONE:(305) 759-

PHILLIP CALTON III
ATTORNEY AT LAW

February 27, 1996

Mr. Nicholas S. Laurent
1915 N. W. 134th Street
Miami, Florida 33167

In Re: Trial Date / ATTENDANCE AT TRIAL
Pennington v. Laurent, et, al.,
Case No: 92-24742 CA 21

Dear Mr. Laurent

Please be advise that the above style case has been set for a two (2) week period from March 25, 1996. It will be necessary for you and your wife to attend the trial. Please remain on standby for said two weeks period. the court will notify us at to the exact date and time of the trial.

Due to the importance of your attendance at trial as a party to the litigation and a necessary witness / It was necessary to deliver this letter by courier and certified mail to ensure notification of the trial date.

I cannot over stress the importance of your intendance at the trial of this cause. Your property rights may be in jeopardy.

Upon receipt of this letter, Please immediately contact either Daniel Koppen, Esquire or the undersigned so that we can discuss the case and review your testimony prior to the trial Your cooperation in this matter is greatly appreciated since your property rights may be affected by the outcome of the case.

Very truly yours,

KOPPEN, WATKINS, PATNERS &
ASSOCIATES, a Professional Association
PHILLIP CARLTON III, ESQUIRE

PC Yii

NATIONS TITLE INSURANCE COMPANY
15770 North Dallas Parkway Suite 1200, LB 45 - Dallas, TX 75248
Phone (214) 774-2100. Nationwide Ph. (800) 654- 7041
Fax (214) 774-0044
Effective September 15, 1996, Our New Area Code is 972

OCTOBER 10, 1996

Mr. and Mrs. Nicholas S. Laurent
1915 NW 134 St
Miami, Fl 33167
RE: Claim File No. 933447

Owner's Policy 096646526 dated March 22, 1993 insuring property described as Lot 15, Block 4 of High view Gardens, Section A, and the North 5'' of Lot 1, Block 4, of 11th Judicial Circuit Court, Dade County, Florida.

Cause No. 92-24742. Richard and Guadalupe Pennington vs. Buel Carter, Jr., Nations Title Insurance of New York et al., 11th Judicial Circuit Court, Dade County Florida.

Dear Mr. and Mrs. Laurent

Enclosed please find the Original Quit claim Deed, which was received by counsel retained on your behalf and has now been recorded in the Official Records, Dade County, Florida. The Quit claim Deed transfers the title from Richard L. Pennington and Guadalupe Pennington to Nicolas S. Laurent.

Nations Title has now fulfilled its responsibility to you under the above Owner's policy. However, you have been uncooperative and have apparently not executed the release that has previously been forwarded

to you by R. Daniel Koppen, Esq., the attorney retained on your behalf. Please immediately execute the release before a notary, and return it to me. Your assistance is appreciated. After the executed Release from you, the claim file maintained by Nations Title will be closed.

Please contact me if I may be of further Assistance.

Very truly yours

/s/_____

C. Lee Cox
Assistant Vice President
Claim Counsel

CLC / tlt

Enclosure

cc R. Daniel Koppen. Esq.
Koppen, Watkins, Partners & Assoc.
700 Northeast 90th St
Miami, Fl 33138-3206

OFF. 17360 96R428644 1996 SEP 23 12:21,
REC.

THIS INSTRUMENTS WAS PREPARED BY:
R. DANIEL KOPPEN, ESQ
KOPPENS, WATKINS, PATNERS & ASSOCIATES,
A Professional Association
700 N.E. 90th Street
Miami, Florida 33136-3208

DOCS1PDEE. 0. 60 SURTX 0. 00
HARVEY RUVIN, CLERK DADE COUNTY, FL

QUIT CLAIM DEED

THIS INDENTURE, made this 21 DAY OF June, 1996, BETWEEN, RICHARD L. PENNINTON and GUADALUPE PENNINGTON, his wife, herein after referred to as First party, to NICHOLAS LAURENT whose post office address is 1915 N. W. 134th Street, Miami, - Florida 33167, and whose Social Security Number is _____, Hereinafter to as second party:

Wheresoever used herein the term "party" shall include the heirs, personal representatives, successor and / or assigns of the respective parties hereto; the use of the singular number shall include the plural, and the plural the singular; the use of any gender shall include the genders; and, if use, the term "notes, the term notes shall include all the notes herein described if more than one.

WITNESSETH, That the said First party, for and in consideration of the sum of $ 10, 00, In hand paid by the said second party, the receipt of which is hereby acknowledged, does hereby remise, release, and quit- claim unto the second party forever, all

the right, Title, Interest, claim, and demand which the said First party has in and to the following described lot, pieces or parcel of land, situates, lying and being in the County of Dade, States of Florida to wit:

Lot 15, Block 4, of HIGHVIEW GARDENS SECTION "A" according to the Plat thereof recorded in Plat Book 45 at page 29 of the Public Records of Dade County, Florida, AND

The North 5 Feet of Lot 1, Block 4, of HIGHVIEW GARDENS according to the Plat therefore recorded in Plat Book 45 at page 22 of the Public Records of Dade County, Florida.
Folio Number: 30-2123-010-0140

TO HAVE AND TO HOLD the same together with all and singular the appertaining thereunto belonging or in anywise appertaining, and all the estates, right, Title, Interest, lien, equity, and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

IN WITNESSES WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
to the presence of:

/s/ _____
Betty S. Mirtleberg

/s/ _____
RICHARD L. PENNINGTON
336 N. E. 80TH Street
Miami, FL 33138

/s/ _____
Betty S. Mirtleberg

/s/ _____
GUADALUPE PENNINGTON
336 N. E. 80TH Street
Miami, FL 33138

I HEREBY CERTIFY that before me the undersigned authority personally appeared RICHARD L. PENNINGTON and wife GUADALUPE PENNINGTON, his wife, who are personally known to me or have produced _____ as identification who did take an oath and acknowledge before me that they executed the foregoing for the purpose therein expressed.

Sworn and subscribed before me this 21 day of June 1996.

/s/_____
NOTARY PUBLIC STATE OF FLORIDA

Print Name CHERO WARREN
Claim # 933447

My Commission Expires: on July 11, 1996.
AFTER RECORDING, RETURN TO:
Fidelity National Title, 15770 Dallas Pkwy., Suite 1200, LB 45, Dallas, TX 75248-3329 Attn. C. Lee Cox